

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

|                                          |   |                           |
|------------------------------------------|---|---------------------------|
| Morris Fitzgerald Stewart, Jr., #343460, | ) | C/A No. 9:13-1891-DCN-BHH |
|                                          | ) |                           |
| Plaintiff,                               | ) |                           |
|                                          | ) |                           |
| vs.                                      | ) |                           |
|                                          | ) | Report and Recommendation |
| T. Calhoun;                              | ) |                           |
| M. Reilley;                              | ) |                           |
| Laurel Albertin;                         | ) |                           |
| L. Novak;                                | ) |                           |
| PJ Tanner;                               | ) |                           |
| Jim Bannon;                              | ) |                           |
| Maureen Coffey,                          | ) |                           |
|                                          | ) |                           |
| Defendants.                              | ) |                           |

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The Plaintiff, currently a state prisoner, is proceeding *pro se*. Plaintiff filed this action pursuant to Title 42, United States Code, Section 1983 on July 10, 2013. This matter is before the Court pursuant to the provisions of Title 28, United States Code, Section 636(b)(1) and Local Rule 73.02(B)(2)(e), D.S.C..

Plaintiff is incarcerated at Allendale Correctional Institution, a facility run by the South Carolina Department of Corrections (“SCDC”) serving a sentence for armed robbery. In this matter, Plaintiff challenges the warrants that were used to arrest him. He alleges he was taken to the Sheriff’s office where he was questioned and was told his co-defendant had “told them everything.” (Dkt. No. 1, p. 3). Plaintiff states this “was a lie to get me to incriminate myself.” *Id.* at 3-4. Plaintiff alleges the police did not have probable cause to obtain a warrant or to make a warrantless arrest at the time he was taken into custody at a local recreation center. *Id.* at 4. Plaintiff further alleges Defendant Coffey signed the arrest warrant at his bond hearing, and “[i]n the final police report [Defendant] Albertin

stated a different crime for the initial arrest, and forged signatures on a warrant to establish probable cause for the seizure at the recreation center.” Id.

Plaintiff also claims he has “proof that [the judge] issued warrants without probable cause, [and Defendants] L. Albertin and L. Novak made alterations to the warrants by changing the date on the face of the warrant that show the issuance date.” Plaintiff claims the alterations were a cover-up because there was not “probable cause for warrants to be issued, or to make a warrantless arrest.” Plaintiff also claims that Defendant Bannon “prosecuted the cases knowing that the warrants were invalid.” Id.

Plaintiff seeks nominal damages and asks the court to vacate his conviction.<sup>1</sup> He also seeks punitive damages for the deprivation of his 4<sup>th</sup> and 14<sup>th</sup> Constitutional rights. Id. at 5.

Under established local procedure in this judicial district, a careful review has been made of the *pro se* Complaint pursuant to the procedural provisions of 28 U.S.C. § 1915; 28 U.S.C. § 1915A; and the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996). This review has been conducted in light of the following precedents: *Denton v. Hernandez*, 504 U.S. 25, 112 S.Ct. 1728 (1992); *Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827 (1989); *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594 (1972); *Nasim v. Warden*,

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Plaintiff, who is seeking damages, appears to be filing this matter pursuant to 42 U.S.C. § 1983. Plaintiff also asks this court to vacate his conviction, however, this type of relief may only be obtained in a habeas action. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973)(complaint or petition challenging the fact or duration of confinement should be construed and processed as a habeas corpus petition, while a complaint or petition challenging the conditions of confinement should be construed and processed as a complaint pursuant to 42 U.S.C. § 1983). The undersigned is treating this pleading as one filed pursuant to 42 U.S.C. § 1983. If the plaintiff wishes to challenge the duration of his confinement, he must obtain habeas forms from the Clerk of Court and file a separate action, after he has fully exhausted his administrative remedies

*Maryland House of Correction*, 64 F.3d 951 (4<sup>th</sup> Cir. 1995)(*en banc*); and *Todd v. Baskerville*, 712 F.2d 70 (4th Cir. 1983).

The Complaint herein has been filed pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. To protect against possible abuses of this privilege, the statute allows a district court to dismiss the case upon a finding that the action “fails to state a claim on which relief may be granted” or is “frivolous or malicious.” 28 U.S.C. §1915(e)(2)(B)(i), (ii). A finding of frivolity can be made where the complaint “lacks an arguable basis either in law or in fact.” *Denton v. Hernandez*, 504 U.S. at 31. Hence, under 28 U.S.C. §1915(e)(2)(B), a claim based on a meritless legal theory may be dismissed *sua sponte*. *Neitzke v. Williams*, 490 U.S. 319 (1989).

This court is required to liberally construe *pro se* documents, *Estelle v. Gamble*, 429 U.S. 97, 97 S. Ct. 285 (1976), holding them to a less stringent standard than those drafted by attorneys, *Hughes v. Rowe*, 449 U.S. 5, 101 S. Ct. 173 (1980)(*per curiam*). Even under this less stringent standard, however, the *pro se* Complaint is subject to summary dismissal. The mandated liberal construction afforded *pro se* pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so, but a district court may not rewrite a petition to “conjure up questions never squarely presented” to the court. *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4<sup>th</sup> Cir. 1985). The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal district court. *Weller v. Department of Social Services*, 901 F.2d 387 (4th Cir. 1990).

As an initial matter, to the extent the Plaintiff seeks damages for alleged “unjust incarceration” from Defendant Bannon, Plaintiff’s Complaint is barred by the well-established legal doctrine of prosecutorial immunity. In South Carolina, regional prosecutors are called Solicitors and Assistant Solicitors. See S.C. Const., art. V, § 24; S.C. Code Ann, § 1-7-310. Solicitors are elected by voters of a judicial circuit and have absolute immunity for their prosecution-related activities in, or connected with, judicial proceedings. Absolute immunity “...is available for conduct of prosecutors that is ‘intimately associated with the judicial phase of the criminal process.’” See *Buckley v. Fitzsimmons*, 509 U.S. 259 (1993) citing *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976). See also *Burns v. Reed*, 500 U.S. 478 (1991). Furthermore, in this Circuit it is well settled that prosecutors are absolutely immune from liability for damages based on their decisions about “whether and when to prosecute,” *Lyles v. Sparks*, 79 F. 3d 372, 377 (4<sup>th</sup> Cir. 1996). See also *Springmen v. Williams*, 122 F. 3d 211, 212-13 (4<sup>th</sup> Cir. 1997).

Defendant Coffey is also absolutely immune from a damages suit arising out of her judicial actions. See *Mireles v. Waco*, 502 U.S. 9 (1991); *Stump v. Sparkman*, 435 U.S. 349, 351-364 (1978); *Pressly v. Gregory*, 831 F.2d 514, 517 (4th Cir. 1987)(a suit by South Carolina inmate against two Virginia magistrates); and *Chu v. Griffith*, 771 F.2d 79, 81 (4th Cir. 1985)(“It has long been settled that a judge is absolutely immune from a claim for damages arising out of his judicial actions.”). See also *Siegert v. Gilley*, 500 U.S. 226 (1991)(immunity presents a threshold question which should be resolved before discovery is even allowed); *Burns v. Reed*, 500 U.S. 478 (1991)(safeguards built into the judicial system tend to reduce the need for private damages actions as a means of controlling unconstitutional conduct); and *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)(absolute

immunity "is an immunity from suit rather than a mere defense to liability"). Since Plaintiff seeks to be awarded money damages in this matter, Defendant Coffey is immune from suit.

Finally, insofar as the Plaintiff's subsequent conviction, related state court proceedings, and arrest are concerned, the § 1983 Complaint is subject to summary dismissal pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994). In *Heck*, the Court stated,

We hold that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm whose unlawfulness would render a conviction or sentence invalid, . . . a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983. Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.

*Heck v. Humphrey*, *supra*. See also *Schafer v. Moore*, 46 F.3d 43 (8<sup>th</sup> Cir. 1995)("Therefore, in light of *Heck*, the complaint was properly dismissed for failure to state a claim."); and *Woods v. Candela*, 47 F.3d 545 (2<sup>nd</sup> Cir. 1995)(*per curiam*)(plaintiff's conviction reversed by state court in 1993; hence, civil rights action timely filed). See also *Brooks v. City of Winston-Salem, N.C.*, 85 F.3d 178 (4<sup>th</sup> Cir. 1996). Accord *Smith v. Holtz*, 879 F. Supp. 435 (M.D.Pa., March 24, 1995); *Burnside v. Mathis*, 2004 WL 2944092 (D.S.C. 2004).

Since the Plaintiff has failed to establish that his conviction has been reversed, expunged, or declared invalid by a state court, and no federal writ of habeas corpus has

been issued, this action must be dismissed for failure to state a claim.

**RECOMMENDATION**

Accordingly, it is recommended that the District Court dismiss the Complaint in the above-captioned case *without prejudice* and without issuance and service of process.

s/Bruce H. Hendricks  
United States Magistrate Judge

August 15, 2013  
Charleston, South Carolina

***The Plaintiff's attention is directed to the NOTICE attached hereto.***

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4<sup>th</sup> Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk  
United States District Court  
Post Office Box 835  
Charleston, South Carolina 29402

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).